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OFFICE OF PETITIONS

In re Patent No. 6,838,273 :
Suerbaum et al. : DECISION ON REQUEST FOR
Issue Date: January 4, 2005 : RECONSIDERATION OF
Application No. 09/015,078 : PATENT TERM ADJUSTMENT
Filed: January 29, 1998 : and
Atty Docket No. 2356-0073-01 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is in response to the NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT filed March 4, 2005. Patentees disclose that the revised patent term adjustment indicated on the patent should be thirteen (13) days not one hundred eighty-four (184) days. The instant paper was recently forwarded to the undersigned for consideration.

The request for correction of the revised patent term adjustment indicated on the patent is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of zero (0) days.

On January 4, 2005, the application matured into U.S. Patent No. 6,838,273, with a revised patent term adjustment of 184 days. On March 4, 2005, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term

Adjustment is 13, given that the patent issued on January 4, 2005.

A review of the application history reveals that periods of reduction of 109 days and 87 days (in place of a reduction of 34 days) should be entered. Pursuant to 37 CFR § 1.704(c)(7) a period of reduction of 109 days should be entered for patentees' filing of a paper on December 10, 2001, correcting an omission in their response filed 109 days earlier on August 23, 2001. See Communication mailed November 15, 2001. Pursuant to 37 CFR § 1.704(b), a reduction of 87 days, not 34 days, should be entered for patentees' taking until November 14, 2003, to file a Notice of Appeal in response to the final Office action mailed May 19, 2003. The response after final Office action filed September 22, 2003 was not in compliance with § 1.113(c) and thus, should not have been used in calculating the period of reduction.

Further, 37 CFR § 1.703(a) provides in pertinent part that:

The period of adjustment under § 1.702(a) is the sum of the following periods:

(3) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

As the Office action filed September 22, 2003 was not in compliance with § 1.113(c), the entry of a period of adjustment of 63 days is incorrect. A review of the record reveals no basis for concluding that the mailing of a Notice of Allowance on March 25, 2004 constituted examination delay within the meaning of 35 U.S.C. 154(b). The entry of the period of adjustment of 63 days has been removed.

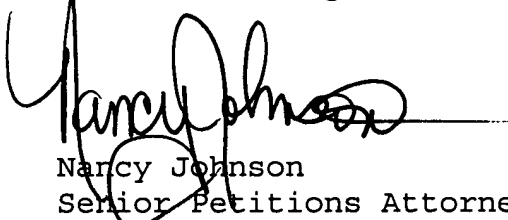
In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is ZERO (0) days.

As this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees

for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by zero (0) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over a horizontal line. The signature is stylized with a large initial "N" and a cursive "J".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction